



DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2014–0024]

Americans with Disabilities Act: Proposed Circular Amendment 2

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of availability of additional proposed circular chapters and request for comments.

SUMMARY: The Federal Transit Administration (FTA) has placed in the docket and on its Web site proposed guidance in the form of seven additional proposed circular chapters to assist transportation providers in meeting the requirements of the U.S. Department of Transportation's (DOT) Americans with Disabilities Act (ADA) regulations. These proposed circular chapters include Chapter 3 (Transportation Facilities), Chapter 6 (Fixed Route Service), Chapter 7 (Demand Responsive Service), Chapter 9 (ADA Paratransit Eligibility), Chapter 10 (Passenger Vessels), Chapter 11 (Other Modes), and Chapter 12 (Oversight, Complaints, and Monitoring). Also included is additional text on monitoring practices, published as addenda to Chapter 2 (General Requirements) and Chapter 8 (Complementary Paratransit Service). Along with the proposed Chapter 4 (Vehicle Acquisition) published on October 2, 2012, and Chapter 1 (Introduction and Applicability), Chapter 2 (General Requirements), Chapter 5 (Equivalent Facilitation), and Chapter 8 (Complementary Paratransit Service) published on February 19, 2014, these chapters are part of a series of 12 chapters that will compose a complete ADA circular. By this notice, FTA invites public comment

on these seven additional proposed circular chapters and the addenda to two previously published chapters.

DATES: Comments must be submitted by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Late-filed comments will be considered to the extent practicable.

ADDRESSES: You may submit comments to Docket No. FTA–2014–0024 by any of the following methods:

Federal eRulemaking Portal: Go to www.regulations.gov and follow the online instructions for submitting comments.

Mail: Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001. Hand Delivery or Courier: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE, between 9 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.

Fax: (202) 493–2251.

Instructions: You must include the agency name (Federal Transit Administration) and Docket number FTA–2014–0024 for this notice at the beginning of your comments. You should submit two copies of your comments if you submit them by mail. If you wish to receive confirmation that FTA received your comments, you must include a self-addressed stamped postcard. Note that all comments received will be posted without change to www.regulations.gov including any personal information provided and will be available to Internet users. You may review DOT’s complete Privacy Act Statement published in the **Federal Register**

on April 11, 2000 (65 FR 19477).

Docket: For access to the docket to read background documents and comments received, go to www.regulations.gov at any time or to the U.S. Department of Transportation, 1200 New Jersey Avenue, SE, Docket Operations, M-30, West Building Ground Floor, Room W12-140, Washington, DC 20590 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For program questions, Dawn Sweet, Office of Civil Rights, Federal Transit Administration, 1200 New Jersey Avenue, SE, Room E54-306, Washington, DC 20590, phone: (202) 366-4018, or email, dawn.sweet@dot.gov. For legal questions, Bonnie Graves, Office of Chief Counsel, same address, Room E56-306, phone: (202) 366-4011, or email, bonnie.graves@dot.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Department of Transportation (DOT) issues regulations implementing the transportation and related provisions of the Americans with Disabilities Act (ADA) of 1990 and Section 504 of the Rehabilitation Act of 1973, as amended. The regulations at 49 CFR parts 27, 37, 38, and 39 set forth specific requirements transportation providers must follow to ensure their services, vehicles, and facilities are accessible to and useable by people with disabilities. The body of ADA regulations is vast, covering multiple modes of public transportation, including fixed route bus and rail (e.g., rapid, commuter, and light rail); ADA complementary paratransit; general public demand

responsive service; and ferry service. The Federal Transit Administration (FTA), as an agency within DOT, is charged with ensuring that providers of public transportation comply with these regulations. In 2010, FTA initiated a comprehensive management review of the agency's core guidance to transit grantees on ADA and other civil rights requirements. A primary goal of the review was to assess whether FTA was providing sufficient, proactive assistance to grantees in meeting civil rights requirements, as opposed to reacting to allegations of failure to comply with the requirements. Based on the results of the review, FTA identified the need to develop an ADA circular similar to the circulars long in place for other FTA programs. The current body of statutes and regulations in the ADA area can be imposing, and in some cases, extremely technical. As a result, FTA recognized value to the transit industry and other stakeholders in compiling and organizing information by topic into a plain English, easy-to-use format.

The proposed circular does not alter, amend, supersede or otherwise affect the DOT ADA regulations themselves or replace or reduce the need for detailed information in the regulations. Its format, however, can outline basic requirements with references to the applicable regulatory sections, along with examples of practices used by transit providers to meet the requirements. Optional practices are included throughout the circular; FTA recognizes that there are many different ways agencies can fulfill the regulatory requirements and ensure the delivery of compliant service.

FTA proposed a phased approach for the development of the new circular, FTA C 4710.1, with the initial proposed chapter focused on vehicle acquisition (See 77 FR 60170, Oct. 2, 2012, www.gpo.gov/fdsys/pkg/FR-2012-10-02/pdf/2012-24185.pdf) . In February, 2014, FTA published four additional chapters (Introduction and Applicability, General Requirements, Equivalent Facilitation, and Complementary Paratransit Service). (See 79 FR 9585, Feb. 19, 2014, <http://www.gpo.gov/fdsys/pkg/FR-2014-02-19/pdf/2014-03530.pdf>).

FTA will not publish final versions of individual chapters, but rather will publish one final circular after receiving comments on all individual chapters.

Today's notice provides a summary of the seven additional proposed chapters and two chapter addenda. These chapters of the proposed circular do not contain any new requirements, policies, or directives. The chapters themselves are not included in this notice; an electronic version may be found on FTA's Web site, at www.fta.dot.gov. Paper copies of the circular may be obtained by contacting FTA's Administrative Services Help Desk, at (202) 366-4865. After the summary of the seven new chapters, this notice describes FTA's approach for publishing a final circular.

After issuing the four additional chapters in February 2014, FTA received comments from 23 individuals and organizations. A number of comments raised concerns that optional practices and suggestions could be misinterpreted as requirements. Objections were raised to the circular project in its proposed format. Commenters provided further suggestions for modifying the format of the circular in order to better distinguish between regulatory requirements and

guidance. FTA has incorporated many of these suggestions into the seven additional proposed chapters issued with this amendment, and will incorporate format changes in the remaining chapters, as appropriate. The revised format presents the regulatory requirements under a “Requirement” subheading; citations are included within quotation marks. A separate “Discussion” section then follows. FTA welcomes comments on these format changes. FTA also received comments on the substance of the draft chapters, including some corrections and suggestions, which FTA will incorporate as appropriate, along with other general comments on the circular format, upon finalization of the entire circular.

FTA encourages stakeholders to provide comments on the content of these seven proposed chapters and two chapter addenda.

II. Summary of Circular Amendment 2

Amendment 2 to the circular includes a table of contents for all 12 proposed chapters, including contents for the previously published proposed chapters: Chapter 1 (Introduction and Applicability), Chapter 2 (General Requirements), Chapter 4 (Vehicle Acquisition), Chapter 5 (Equivalent Facilitation), and Chapter 8 (Complementary Paratransit Service).

The table of contents for Chapters 2 and 8 includes the proposed additional sections on monitoring. Finally, the table of contents includes the seven proposed chapters that are the subject of today’s notice: Chapter 3 (Transportation Facilities), Chapter 6 (Fixed Route Service), Chapter 7 (Demand Responsive Service), Chapter 9 (ADA Paratransit Eligibility), Chapter 10

(Passenger Vessels), Chapter 11 (Other Modes), and Chapter 12 (Oversight, Complaints, and Monitoring).

Proposed Chapter 3, “Transportation Facilities,” explains the regulations related to transportation facilities with emphasis on the requirements for new construction and alterations. Proposed Chapter 3 explains the history of the ADA Accessibility Guidelines (ADAAG), including the revisions adopted by DOT in 2006 as the DOT Standards. The chapter does not attempt to exhaustively cover all topics related to construction and alteration but rather presents examples of common issues in applying the DOT Standards, such as the number and location of accessible station parking spaces, curb ramps and track crossings, and station platforms. The proposed chapter includes an extensive discussion on path of travel alterations and cost disproportionality—an issue that has been the source of misunderstanding in the past. Attached to proposed Chapter 3 is a checklist grantees may use to review new construction and alterations to help ensure compliance, including 18 review topics covering parking and loading areas, accessible routes, signs, facility elements, elevators and lifts, and platforms, among others.

Proposed Chapter 6, “Fixed Route Service,” explains the requirements for fixed route bus (local, express, commuter, and bus rapid transit (BRT)) and rail (light rail, rapid rail, and commuter rail). Proposed Chapter 6 does not cover intercity rail. The chapter primarily focuses on subpart G requirements that are specific to fixed route, such as priority seating, alternative transportation when vehicle lifts are not working, and stop announcements and route identification

efforts. The cross-cutting requirements that apply to other modes of transit in addition to fixed route, such as the transport of service animals, wheelchairs, and oxygen, are covered in the previously published proposed Chapter 2, “General Requirements.” Proposed Chapter 6 concludes with two forms grantees may use to monitor their own stop announcement and route identification efforts—forms similar to those used by FTA when it conducts onsite compliance reviews.

Proposed Chapter 7, “Demand Responsive Service,” addresses demand responsive services such as traditional dial-a-ride, taxi subsidy programs, vanpool programs, and route deviation service. ADA complementary paratransit service, also a type of demand responsive service, is covered separately in proposed Chapters 8 and 9 of this circular. Proposed Chapter 7 explains the different types of demand responsive services and provides illustrations of service types for consideration at the local level. The chapter then explains the part 37 equivalent service requirements that permit transit agencies to purchase inaccessible vehicles, and explains equivalent service and service provision in the most integrated setting. Route deviation, in particular, has been a topic of interest and this chapter attempts to provide clarity on the issue. The section on route deviation service equivalency considerations includes a discussion of discriminatory policies and practices that limit the use of route deviation services. The same discussion explains the requirements to provide complementary paratransit service for transit agencies that limit route deviation requests to riders with disabilities. The discussion also explains how agencies may accommodate requests for complementary paratransit service either by deviating vehicles from

fixed routes or by using available supplemental demand responsive (e.g., dial-a-ride) vehicles—essentially comingling complementary paratransit eligible riders with other demand responsive customers on the same vehicle. Proposed Chapter 7 concludes with options for monitoring and determining equivalency and includes a table for the seven service requirements. The chapter includes a sample certification of equivalent service as an attachment.

Proposed Chapter 9, “ADA Paratransit Eligibility,” addresses eligibility for complementary paratransit services, covering who is eligible and the regulatory requirements that transit agencies must follow when determining eligibility. The chapter focuses on ADA paratransit eligibility standards and includes a detailed discussion of eligible individuals as well as important considerations in eligibility such as most limiting conditions and environmental barriers. It discusses each type of ADA paratransit eligibility, including unconditional, conditional, and temporary eligibility, and includes considerations for applying conditional eligibility with examples of explicit conditions and suggestions on how to appropriately apply conditions. Requirements surrounding personal care attendants, companions, and visitors are also addressed in this chapter.

Proposed Chapter 9 describes the types of eligibility determination processes transit agencies use and includes suggested sources of information for determining eligibility such as supplemental information provided by professionals, as well as important considerations for the use of such information.

The chapter also covers the paperwork aspect of the paratransit application process. For example, it explains the prohibition against unreasonable burdens on applicants for ADA paratransit eligibility and includes examples of unreasonable burdens. The chapter includes information on how to treat incomplete applications for ADA paratransit eligibility, maintain an applicant's confidentiality, and offer eligibility materials in accessible formats. Proposed Chapter 9 goes on to explain the requirements for documenting eligibility, including the use of identification cards. Also included is a discussion of proper wording for letters to applicants found ineligible, conditionally eligible, or temporarily eligible.

Proposed Chapter 9 also explains the requirements for making timely determinations and for providing service if determinations are not made within 21 days of submission of complete applications. This includes a discussion of the timing of appointments for in-person assessments and their relationship to the 21-day application timeframe. The chapter explains the requirement for recertification of ADA paratransit eligibility at reasonable intervals and the appeal process requirements for applicants found ineligible, conditionally eligible, or temporarily eligible. This section includes information on notifying applicants of their right to appeal the decision, the right to be heard in person, the separation of function requirements, and the timing and documentation of appeal decisions. It also offers suggestions on selecting individuals to hear appeals and related practices that can help minimize the need for appeals.

The last section of proposed Chapter 9 ends with a discussion of two topics that have generated particular interest in the industry and within the disability community: no-show policies and origin-to-destination service. First, the chapter explains the administrative process for suspending complementary paratransit service for riders who establish a pattern or practice of missing scheduled trips or canceling trips late. The discussion explains how to establish that a pattern or practice exists, methods of notifying riders of proposed suspensions, and the appeal process. The discussion then suggests practices for minimizing rider no-shows and offers references to guidance documents.

The section on the requirement for origin-to-destination service refers to DOT's 2005 Disability Law Guidance, which elaborates on the meaning of origin-to-destination service. (See http://www.fta.dot.gov/12325_3891.html). FTA notes that DOT has an open rulemaking on reasonable modification of policy and through that rulemaking sought public comments on issues related to origin-to-destination service. (See 71 FR 9761, Feb. 27, 2006). The proposed circular presents DOT's position on origin-to-destination service consistent with the 2005 guidance. Any changes to ADA requirements made through rulemaking at the DOT level may require associated changes to this circular.

Several attachments are included with this chapter: Proposed task and skills lists for assessing abilities to use fixed route transit services; sample letters for unconditional, conditional, and temporary ADA paratransit eligibility; a sample letter for denial of ADA paratransit eligibility, including a sample basis

for the determination and a sample ADA paratransit eligibility determination appeal request form; and sample no-show policy documents and related guidance.

Proposed Chapter 10, “Passenger Vessels,” covers the requirements for ferries that apply to passenger vessel operators (PVOs) that receive FTA financial assistance. Regulations addressed in this chapter are from 49 CFR part 39 subparts A, B, C, D, F, and G. The subpart E guidelines for accessibility of vessels are currently reserved. The proposed chapter explains the unique challenges posed by marine environments and the regulatory requirements from multiple agencies.

Proposed Chapter 10 then covers each of the part 39 subparts and provides examples of good practices. The chapter also provides excerpts from the Department’s additional guidance in the form of questions and answers concerning 49 CFR part 39, published on January 31, 2011. (See www.civilrights.dot.gov/sites/default/files/PVGuidance2_3_11.pdf). Proposed Chapter 10 also includes examples of good PVO practices in accommodating passengers with disabilities, including accommodating the needs of passengers with hearing impairments, providing information on vessel accessibility, and the resolution of complaints.

Proposed Chapter 11, “Other Modes,” covers the 49 CFR part 38 subpart H requirements for other vehicles and systems. These other modes are not covered by the requirements in 49 CFR part 38 subparts B, C, D, and E (vans, buses, and rail vehicles); these requirements are covered in the proposed chapter for vehicle acquisition (Chapter 4), published on Oct. 2, 2012. The chapter covers

the requirements for automated guideway transit vehicles and systems, high-speed rail cars, monorails, trams and similar vehicles and systems, and includes hyperlinks to the part 38 requirements that apply to each mode.

Proposed Chapter 12, “Oversight, Complaints, and Monitoring,” explains how FTA carries out its oversight and enforcement responsibilities—including complaint investigations and onsite reviews—and covers transit agencies’ own responsibilities for resolving and tracking nondiscrimination complaints. A sample comment form is included as an attachment to the chapter. The chapter also provides an overview of monitoring compliance for the programs and services agencies provide and monitoring any contractors or service providers that agencies use and includes a table showing the monitoring topics discussed in different circular chapters.

Amendment 2 to the circular also includes two short proposed addenda to Chapters 2 and 8 published as Amendment 1 to the circular. The addendum proposed for insertion at the end of proposed Chapter 2, “General Requirements,” covers monitoring methods to ensure compliance with the topics in that chapter. Topics covered include gathering relevant service information (e.g., elevator working condition records), reviewing service data, directly observing the provision of service, and reviewing rider comments and complaints.

The addendum proposed for insertion at the end of Chapter 8, “Complementary Paratransit Service,” covers monitoring methods to ensure compliance with the topics in that chapter. Topics covered include a discussion of the components of an effective monitoring program. These include policies,

procedures and standards, data collection and analysis, first-hand observations, provision of service, and reviewing rider comments and complaints.

III. Publication Approach

With the publication of the seven additional proposed chapters, FTA has now published all 12 proposed chapters that would compose FTA's proposed ADA circular. In its final form, the circular will provide guidance specifically for recipients of FTA financial assistance that provide public transportation service. As such, requirements found in the DOT ADA regulations, for example, related to intercity rail (i.e., Amtrak), private motor coach service (e.g., Greyhound), taxi service, and airport transportation will not be addressed in the FTA ADA circular.

FTA will not publish final versions of individual chapters, but rather will publish one final circular after receiving comments on individual chapters. Once comments are received on these remaining seven chapters, FTA will review the circular as one comprehensive document, make further refinements and publish a final circular.

IV. Conclusion

FTA seeks comments on the scope and content of the seven chapters of the circular addressed in Amendment 2: Chapter 3 (Transportation Facilities), Chapter 6 (Fixed Route Service), Chapter 7 (Demand Responsive Service), Chapter 9 (ADA Paratransit Eligibility), Chapter 10 (Passenger Vessels), Chapter 11 (Other Modes), and Chapter 12 (Oversight, Complaints, and Monitoring), and additional text on monitoring practices, published as addenda to previously published Chapters 2 and 8.

FTA is seeking comments specifically regarding (1) whether there are areas in each of these chapters that need more clarification or explanation; (2) important topics that were overlooked; (3) whether any sections, as written, appear to exceed regulatory requirements and which are not clearly presented as options; (4) whether any regulatory requirements are not clearly delineated as requirements; (5) whether the document's format change (e.g., the addition of a separate "Requirements" section in the topic areas) sufficiently addresses comments received on previous chapters regarding the need to separate regulatory requirements from options and technical assistance; and (6) examples of local practices that have proven effective that would be worth describing in the circular.

Therese W. McMillan

Acting Administrator.

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11/12/2014]